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5 Attorneys for Defendants  
 6 Michael R. Neely, Perry J. Neely and Gary Neely

7  
 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10  
 11 PALMTREE ACQUISITION  
 12 CORPORATION, a Delaware corporation,

13 Plaintiff,

14 vs.

15 MICHAEL R. NEELY, an individual,  
 16 PERRY J. NEELY, an individual; GARY  
 17 NEELY, an individual; MICHAEL R.  
 18 NEELY, PERRY J. NEELY and GARY  
 19 NEELY dba MIKE'S ONE HOUR  
 20 CLEANERS; CHARLES FREDERICK  
 21 HARTZ dba PAUL'S SPARKLE  
 22 CLEANERS; CHARLES F. HARTZ, an  
 23 individual; MULTIMATIC  
 24 CORPORATION, a New Jersey  
 25 corporation; WESTERN STATES  
 26 DESIGN, a California corporation;  
 27 MCCORDUCK PROPERTIES  
 28 LIVERMORE, LLC, a Delaware limited  
 liability company individually and as the  
 successor to JOHN MCCORMICK,  
 KATHLEEN MCCORDUCK, PAMELA  
 MCCORDUCK, SANDRA  
 MCCORDUCK MARONA, and IMA  
 FINANCIAL CORPORATION, a  
 California corporation; STARK  
 INVESTMENT COMPANY, a California  
 general partnership; GRUBB & ELLIS  
 REALTY INCOME TRUST,

Case No. CV 08 3168 EMC

**STIPULATION AND [PROPOSED]  
 ORDER RE CONSENT TO PROCEED  
 BEFORE AN UNITED STATES  
 MAGISTRATE JUDGE; ANSWERS,  
 CROSSCLAIMS, COUNTERCLAIMS AND  
 AMENDED PLEADINGS; MEDIATION;  
 SCHEDULING OF INITIAL CASE  
 MANAGEMENT CONFERENCE; AND  
 DISCOVERY STAY**

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LIQUIDATING TRUST, a California trust;  
and DOES 1-20, inclusive,  
Defendants.

### RECITALS

A. Plaintiff Palmtree Acquisition Corporation filed this action ("Action") as a "re-opener" of a prior action that was conditionally settled, which prior action was filed on February 3, 1993 in the United States District Court for the Northern District of California, entitled *Grubb & Ellis Realty Trust v. Catellus Development Corp., et al.*, and related cross-actions, Case No. C93-0383 SBA ("Prior Action").

B. On February 7, 1994, the parties to the Prior Action entered into a settlement agreement ("1994 Settlement"). On February 17, 1994, this Court entered an order approving the settlement agreement and dismissing the Prior Action.

C. Pursuant to the 1994 Settlement, the parties agreed that the release amongst each other would not extend to:

"...any claims, causes of action, obligations, damages, expenses or liabilities resulting from (1) claims or cross-claims arising from actions brought by third parties after the date of this agreement relating to PCE [perchloroethylene] contamination at the properties, or (2) actions by governmental agencies requiring cleanup of PCE contamination or seeking recovery of governmental response costs for the cleanup of PCE contamination: (a) of the deeper aquifer as defined in Paragraph 5 of SCO [Site Cleanup Order], or (b) in the form of DNAPLs, defined as PCE found in pore-water concentrations which exceed their effective solubilities as measured using the residual DNAPL detection method of Feenstra, Mackay, and Cherry (1991). The limitations expressed in the preceding sentence on the release contained in this paragraph are referred to as "the Paragraph 9 reopeners".

D. On March 17, 2008, and March 21, 2008, the California Regional Water Quality Control Board ("RWQCB"), a governmental agency, sent letters to certain of the defendants and

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1 the plaintiff, and/or their predecessors, requiring the further investigation and monitoring of PCE  
2 contamination which potentially impacted the deeper aquifer that may be in the form of  
3 DNAPLS, thereby triggering the "Paragraph 9 reopeners" ("RWQCB Directives"). As a result of  
4 the RWQCB Directives, certain parties to the prior 1994 Settlement, made demand upon other  
5 parties asserting that the Paragraph 9 reopener applied and demanding that they respond to the  
6 RWQCB Directives.

7 E. On July 1, 2008, plaintiff Palmtree Acquisition Corporation, the successor to one  
8 of the 1994 Settlement parties, Catellus Development Corporation, filed a Complaint for  
9 CERCLA Cost Recovery, Damages and Declaratory Relief, seeking contribution and damages  
10 against certain of the other parties to the 1994 Settlement, pursuant to the Paragraph 9 reopener  
11 ("Current Action").

12 F. Subsequent to the filing of the Current Action, the parties to the Current Action  
13 agreed to cooperate in jointly retaining an environmental consultant to respond to the RWQCB  
14 Directives. The environmental consultant has been engaged and the parties to the Current Action  
15 anticipate that the initial response to the RWQCB Directives will be completed by January 1,  
16 2009.

17 G. In the course of the litigating the Prior Action, the parties to the Prior Action  
18 engaged in discovery relating to the factual background, ownership and operations of certain of  
19 the parties to the Prior Action and their conduct which may have resulted in the PCE  
20 contamination.

21 H. The parties to this Current Action who were defendants in the Prior Action  
22 answered, and filed various crossclaims and/or counterclaims.

23 I. The responses, defenses, crossclaims and/or counterclaims in this Current Action  
24 should be substantially similar to those raised in the Prior Action.

25 J. Most of the defendants in the Current Action have entered into stipulations with  
26 the plaintiff to extend the time to respond to the complaint to September 15, 2008.

27 K. The parties to the Current Action have met and conferred pursuant to the Court's  
28 Order Setting Initial Case Management Conference and ADR Deadlines and submit this

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1 Stipulation to address scheduling, case management and ADR issues.

2 Therefore, in the interest of judicial economy, pursuant to Local Rule 6-1(b) and 7-12, the  
3 parties below hereby agree and stipulate as follows:

4 **STIPULATION**

5 1. In accordance with the provisions of Title 28, U.S.C. Section 636(c), the parties  
6 hereby voluntarily consent to have a United States Magistrate Judge Edward M. Chen conduct  
7 any and all further proceeding in the case, including trial, and order the entry of a final judgment.  
8 Appeal from the judgment shall be taken directly to the United States Court of Appeal.

9 2. Further the parties acknowledge that counsel for Michael R. Neely, Perry J. Neely  
10 and Gary Neely, Christine K. Noma, has disclosed that she has known Magistrate Judge Chen for  
11 over 20 years and that they belong to and support many of the same legal organizations; and each  
12 of the parties do not object to Magistrate Judge Edward Chen presiding over this Action.

13 3. Each of the defendants in this Current Action shall be deemed to have denied each  
14 and every allegation in the Complaint.

15 4. The defendants to this Current Action shall be deemed to have filed crossclaims  
16 against each other for contribution and indemnity and to have filed counterclaims for contribution  
17 and indemnity against the plaintiff.

18 5. Each of the defendants to this Current Action reserves the right to supplement its  
19 response to the complaint, and may file an answer and separate crossclaims or counterclaims at a  
20 later date, but no later than 60 days following the conclusion of Mediation as described below.

21 6. Each of the defendants to this Current Action further reserves the right to file  
22 crossclaims against other third parties who are not parties to this Action, and the parties reserve  
23 any and all rights against such third parties. The plaintiff reserves the right to amend the  
24 complaint to add or remove allegations, to add new parties or to make any other changes  
25 consistent with the Federal Rules of Civil Procedure.

26 7. The parties to this Current Action agree to commence settlement discussions with  
27 a private mediator, to be scheduled no later than February 2, 2009 ("Mediation"). The Mediation  
28 may cover multiple days and may be continued from time to time and will be deemed to have

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By:   
Robert C. Goodman, Esq.  
Attorneys for Charles Frederick Hartz, dba Paul's  
Sparkle Cleaners

DATED: \_\_\_\_\_ Dongell Lawrence Finney, LLP

By: \_\_\_\_\_  
Thomas F. Vandenburg, Esq.  
Attorneys for Multimatic Corporation

DATED: \_\_\_\_\_ Foley McIntosh Frey & Claytor

By: \_\_\_\_\_  
Kenneth W. Pritikin, Esq.  
Attorneys for Western State Design

DATED: \_\_\_\_\_ Gordon, Watrous, Ryan, Langley, Bruno &  
Paltenghi

By: \_\_\_\_\_  
Bruce C. Paltenghi, Esq.  
Attorneys for McCorduck Properties Livermore,  
LLC

DATED: \_\_\_\_\_ Gonsalves & Kozachenko

By: \_\_\_\_\_  
Paul Kozachenko, Esq.  
Attorneys for Stark Investment Company

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1 DATED: \_\_\_\_\_ Rogers Joseph O'Donnell  
2  
3  
4 By: \_\_\_\_\_  
5 Robert C. Goodman, Esq.  
6 Attorneys for Charles Frederick Hartz, dba Paul's  
7 Sparkle Cleaners  
8  
9 DATED: \_\_\_\_\_ Dongell Lawrence Finney, LLP  
10  
11 By: W. Culver for  
12 Thomas F. Vandenburg, Esq.  
13 Attorneys for Multimatic Corporation  
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15 DATED: \_\_\_\_\_ Foley McIntosh Frey & Claytor  
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17 By: \_\_\_\_\_  
18 Kenneth W. Pritikin, Esq.  
19 Attorneys for Western State Design  
20  
21 DATED: \_\_\_\_\_ Gordon, Watrous, Ryan, Langley, Bruno &  
22 Paltenghi  
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24 By: \_\_\_\_\_  
25 Bruce C. Paltenghi, Esq.  
26 Attorneys for McCorduck Properties Livermore,  
27 LLC  
28 DATED: \_\_\_\_\_ Gonsalves & Kozachenko  
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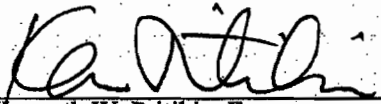
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By: \_\_\_\_\_  
Robert C. Goodman, Esq.  
Attorneys for Charles Frederick Hartz, dba Paul's  
Sparkle Cleaners

DATED: \_\_\_\_\_ Dongell Lawrence Finney, LLP

By: \_\_\_\_\_  
Thomas F. Vandenburg, Esq.  
Attorneys for Multimatic Corporation

DATED: 9/8/08 \_\_\_\_\_ Foley McIntosh Frey & Claytor

By:  \_\_\_\_\_  
Kenneth W. Pritikin, Esq.  
Attorneys for Western State Design

DATED: \_\_\_\_\_ Gordon, Watrous, Ryan, Langley, Bruno &  
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By: \_\_\_\_\_  
Robert C. Goodman, Esq.  
Attorneys for Charles Frederick Hartz, dba Paul's  
Sparkle Cleaners

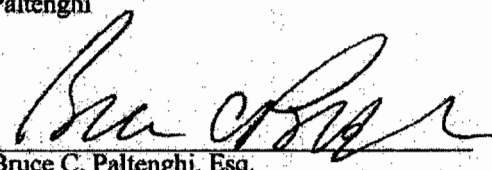
DATED: \_\_\_\_\_ Dongell Lawrence Finney, LLP

By: \_\_\_\_\_  
Thomas F. Vandenburg, Esq.  
Attorneys for Multimatic Corporation

DATED: \_\_\_\_\_ Foley McIntosh Frey & Claytor

By: \_\_\_\_\_  
Kenneth W. Pritikin, Esq.  
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DATED: Sept 9, 2008 Gordon, Watrous, Ryan, Langley, Bruno &  
Paltenghi

By:   
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DATED: \_\_\_\_\_ Gonsalves & Kozachenko

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1 DATED: \_\_\_\_\_ Rogers Joseph O'Donnell

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4 By: \_\_\_\_\_  
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7 Sparkle Cleaners

6

7 DATED: \_\_\_\_\_ Dongell Lawrence Finney, LLP

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9 By: \_\_\_\_\_  
10 Thomas F. Vandenburg, Esq.  
11 Attorneys for Multimatic Corporation

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11 DATED: \_\_\_\_\_ Foley McIntosh Frey & Claytor

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13 By: \_\_\_\_\_  
14 Kenneth W. Pritikin, Esq.  
15 Attorneys for Western State Design

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17 DATED: \_\_\_\_\_ Gordon, Watrous, Ryan, Langley, Bruno &  
18 Paltenghi

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20 By: \_\_\_\_\_  
21 Bruce C. Paltenghi, Esq.  
22 Attorneys for McCorduck Properties Livermore,  
23 LLC

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23 DATED: 9-9-2008 Gonsalves & Kozachenko

24

25 By: Paul Kozachenko  
26 Paul Kozachenko, Esq.  
27 Attorneys for Stark Investment Company

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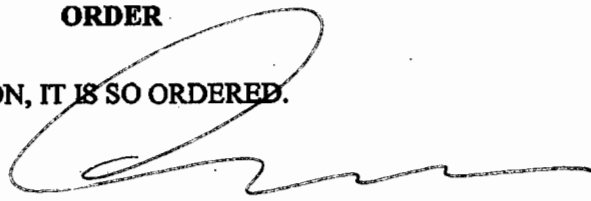
1  
2 DATED: 9/10/08  
3

4 By:   
5 Harold A. Ellis Jr., Trustee for  
6 Grubb & Ellis Realty Income Trust, Liquidating  
7 Trust

8 ORDER

9 PURSUANT TO STIPULATION, IT IS SO ORDERED.

10  
11 Dated: 9/15/08  
12

  
13 Edward M. Chen  
14 Magistrate Judge of the United States District  
15 Court

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**PROOF OF SERVICE**

I, Eileen M. Dunbar, declare:

I am a citizen of the United States and am employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1111 Broadway, 24th Floor, Oakland, California 94607-4036. On September 11, 2008, I served a copy of the within document(s):

**STIPULATION AND [PROPOSED] ORDER RE CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE; ANSWERS, CROSSCLAIMS, COUNTERCLAIMS AND AMENDED PLEADINGS; MEDIATION; SCHEDULING OF INITIAL CASE MANAGEMENT CONFERENCE; AND DISCOVERY STAY**

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. The facsimile machine I used complied with California Rules of the Court, Rule 2003, and no error was reported by the machine. Pursuant to California Rules of the Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Proof of Service.

☒ at my business address identified above by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, and by placing the envelope, addressed as set forth below, for deposit in the United States Postal Service that same day in the ordinary course of business. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ by placing the document(s) listed above in a sealed \_\_\_\_\_ envelope with overnight delivery fees paid or provided for, addressed to the person(s) on whom it is to be served, at the address(es) set forth below, and causing the envelope to be delivered that same date to a \_\_\_\_\_ courier or driver authorized by the express service carrier to receive documents for delivery.

☐ by personally delivering true and correct copies of the document(s) listed above in a sealed envelope, addressed to the person(s) at the address(es) set forth below, by leaving the envelope, which was clearly labeled to identify the attorney(es) being served, with the receptionist or other person apparently in charge at the address(es) set forth below.

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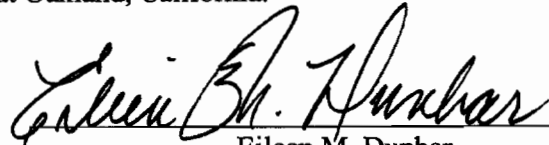
1	Stuart I. Block	<i>Attorneys for Plaintiff Palmtree</i>
2	Peter M. Morrisette	<i>Acquisition Corporation</i>
3	Cox, Castle & Nicholson LLP	
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25	Gonsalves & Kozachenko	<i>Attorneys for Stark Investment</i>
26	1133 Auburn Street	<i>Company</i>
27	Fremont, CA 94538	
28	James F. Ellis	
	Ellis Partners LLC	<i>Representative for Grubb &amp; Ellis</i>
	111 Sutter Street, Suite 800	<i>Realty Income Trust Liquidating Trust</i>
	San Francisco, CA 94104	

☐ I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Executed on September 11, 2008, at Oakland, California.

  
Eileen M. Dunbar

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